



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

August 21, 2013
PR 13-18

Mr. Joshua N. Fenton
Go Local Providence
44 Weybosset Street
Providence, Rhode Island 02903

RE: Go Local Providence v. City of Providence

Dear Mr. Fenton:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the City of Providence ("City") is complete. By correspondence dated June 10, 2013, you allege that on May 24, 2013, you filed an APRA request with the City and that "more than 16 days after the submission, the 10-day period [for the City to respond] has elapsed." Your complaint continues that as of June 10, 2013, "[t]he City of Providence has repeatedly failed to respond to follow up calls and emails regarding the request for documents" and that since Go Local Providence has "complied with the State Law" you request that this Department enforce the APRA. Your complaint closes that the City is "clearly in violation of the request for public documents" and that "[t]his type of stalling and non-responsiveness is in violation of the law." Your May 24, 2013 request sought "information about the travel schedule and costs associated with the Commissioner of Public Safety for the City of Providence."¹ The City responded to your APRA request and provided you documents on June 10, 2013, the same day you filed your complaint.²

In response to your complaint, we received a substantive response from Kathryn M. Sabatini, Assistant City Solicitor for the City of Providence. Ms. Sabatini states, in pertinent part:

¹ You requested information regarding the travel of the Commissioner of Public Safety for 2011, 2012 and 2013 through April. Specifically, you requested: "1. Copies of all travel dates in state and out of state for you, the commissioner of public safety; 2. Reason for the travel; 3. Cost of the travel whether paid by the city or another government, non-profit or for profit entity; 4. Copies of all expense reports; 5. All information about travel costs, and; 6. List of hotels and restaurants."

² Your complaint was sent via e-mail to this Department at 2:57 p.m. on June 10, 2013. The City provided you with its response via e-mail at 5:20 p.m. on June 10, 2013.

“3. On Friday May 24, 2013, David Ortiz, Director of Media Relations and Communications, sent an email in which he forwarded an APRA request that he had received via email from news@golocalprov.com...Attached to the email was a word document containing a Public Records Request, seeking information pertaining to Commissioner of Public Safety Steven Paré’s travel.

4. On Monday May 27, 2013, the City celebrated Memorial Day, a federal holiday, and City offices were closed.

...

8. On June 10, 2013, the Public Records Unit provided a response to Go Local via email at the email address provided. Attached to the email...was a letter to the requester[, which] included information regarding how to appeal the decision of the Public Records Unit[,...]...[and] the sixty (60)-page PDF document...redacted pursuant to APRA.

9. On June 11, 2013, I received an email from news@golocalprov.com ...[which] inquired as follows: ‘Is the material sent yesterday in full compliance with the FOIA [sic] request sent on May 24th (per our complaint filled [sic] with the Attorney General’s Office on June 10th)?’

...

11. On that same date, Margaret Botelho responded [to Ms. Sabatini’s internal inquiry concerning your June 11, 2013 inquiry] via email, indicating that she had overlooked an aspect of the request, for which she maintained responsive documents. Attached to her email, were three PDF attachments.

...

13. On [June 12, 2013] I provided a supplemental response via email to news@golocalprov.com in which I explained that on June 10 the Public Records Unit believed that it was responding fully to the request but that, in light of Go Local’s email, further inquiry had been conducted which revealed additional responsive documents, which were now being provided with similar redactions...Attached to that email were the three PDF documents that Margaret Botelho had provided.

14. Less than thirty minutes later I received an email from Josh Fenton cofounder & CEO of Go Local, in which he indicated that he would be pursuing a claim with the Attorney General.³

³ In your June 12th email to the City you assert that “[t]he initial response was not complete,” and that “[t]he second response is still not complete.” These averments were made only to the City

...

16. I do not have any record of any phone calls or emails from Go Local regarding this request, other than the two emails mentioned, supra.

17. To my knowledge, the City has provided all documents responsive to Go Local's May 24th request for records."

It is noteworthy that you provided no reply to the City's arguments.

At the outset, we note that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the City violated the APRA. See R.I. Gen. Laws § 38-2-7. In other words, we do not write on a blank slate.

The APRA states that, unless exempt, "all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records." R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond within ten (10) business days, by producing responsive documents, denying the request with a reason(s), or extending the time period necessary to comply. "Any denial of the right to inspect or copy records, in whole or in part...shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial." See R.I. Gen. Laws § 38-2-7(a)(emphasis added).

As framed by your June 10, 2013 complaint, on May 24, 2013, you filed an APRA request and "more than 16 days after the submission, the 10-day period [for the City to respond] has elapsed." You contend these facts constitute an APRA violation. We disagree.

We begin by noting that your complaint was filed before your allegation was ripe. The APRA mandates "[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request." R.I. Gen. Laws § 38-2-3(e)(emphasis added). See also R.I. Gen. Laws § 38-2-7(a). Your request was made, and received by the City, on May 24, 2013. Although you correctly observe that "more than 16 days" elapsed from the time of your

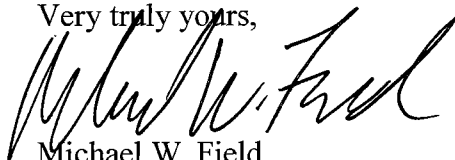
through e-mail correspondence and no assertion has been made to this Department that the City's response is incomplete. More importantly, no evidence (or argument) has been presented to this Department to support this claim. Since this claim has not been made or supported to this Department, we do not address it.

request to the time of your complaint, pursuant to the APRA, the City had ten (10) business days to reply to your request, not ten (10) days. See R.I. Gen. Laws §§ 38-2-3(e); 38-2-7(a). Because May 27, 2013 was Memorial Day, a national holiday where the City was closed, the City correctly calculated that its response was due on or before June 10, 2013. See Sabatini Affidavit, ¶ 4. Since your complaint was filed prior to the expiration of the timeframe the APRA permits a public body to respond to an APRA request, your complaint was premature and the City's June 10, 2013 response did not violate the APRA.

Although the Attorney General will not file suit in this matter, nothing within the APRA prohibits an individual or entity from pursuing a claim in Superior Court. Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping the government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Field", written over a horizontal line.

Michael W. Field
Assistant Attorney General

Cc: Kathryn M. Sabatini, Esq.